

*Criminal Code*

he can be tried by the same court as an habitual criminal, and apparently the only evidence necessary to find him such, either by judge or by judge and jury, is that, since attaining the age of eighteen, he has at least three times previously been convicted of the crime charged in the indictment, and for which he was liable to five years' imprisonment.

Mr. ILSLEY: That is not quite right.

Mr. DIEFENBAKER: There is the question of leading a criminal life.

Mr. JAENICKE: That all has to be proved, and then the court, according to section 575B, if it is of the opinion that, by reason of his criminal habits and mode of life, it is expedient for the protection of the public, may pass a further indeterminate sentence. Suppose he is tried by a judge and jury. He will be tried by the same court, judge and jury, for being an habitual criminal, and all the jury has to determine is whether he has been three times convicted. The question of his mode of life and criminal habits is for the judge to decide, according to my interpretation of this section.

Mr. ILSLEY: No.

Mr. JAENICKE: I may be wrong, but that is my interpretation of it. I would suggest to the minister that something else be included in line 30 after "mode of life", or in line 29 after "criminal habits". Would his attitude toward accepted standards of morality be taken into consideration? I should like the minister to consider that point.

Mr. CROLL: Perhaps the minister can answer a number of questions at the same time. Might I direct his attention to subsection 2 on page 7:

In any indictment under this section it shall be sufficient, after charging the crime, to state that the offender is a habitual criminal.

As I think the minister knows, if perchance the man is tried before a jury and he does not see fit to give evidence, it is the custom for the jury to take the indictment with them into the jury room, and on reading the indictment they see immediately that he is an habitual criminal. I submit that we are prejudicing the case of the man who is being tried, and I do not think it is the minister's desire to do that. You are giving information that would not ordinarily be obtained. That is my reading of the section. I do not know what others make of it, but in that way he may be three times the loser, much too quickly under that method of procedure.

Mr. HEON: It would be equivalent to reading the criminal record of the accused before he was found guilty.

[Mr. Jaenicke.]

Mr. CROLL: I am suggesting that the man does not enter the box and there is no way of the jury knowing. They would have nothing before them except the evidence. But it is mentioned in the indictment that he is a habitual criminal.

Mr. CROLL: That is my point.

Mr. JAENICKE: That is what I say; it would inform a jury that a man had a criminal record, before he was found guilty.

Mr. CROLL: Quite; that is my suggestion.

Mr. McMASTER: It has been suggested that the minister answer all the questions at once, and I should like to know if the records show that there ever was such a person, who has been convicted four times of indictable offences and punished with sentences of at least five years. If there are such people, how many are there?

Mr. ILSLEY: Let us take the questions one by one. In the first place, the hon. member for Kindersley asked a question. If the case is tried by a judge with a jury, before a man can be convicted of being a habitual criminal the jury must find not only that he has been convicted three times previously of offences for which he was liable to at least five years' imprisonment, but also that he is persistently leading a criminal life.

Mr. JAENICKE: With all due respect, I do not think the section says that.

Mr. CHURCH: The minister has been in charge of the department for only a short time, but I should think that already—

Mr. ILSLEY: I wish the hon. member for Kindersley would elaborate his point, because he has a different understanding of it.

Mr. JAENICKE: Section 575C says:

A person shall not be found to be a habitual criminal unless the judge or jury as the case may be, finds on evidence . . .

There is only one condition there as to what they have to find.

Mr. ILSLEY: Read it.

Mr. JAENICKE:

(a) that since attaining the age of eighteen years he has at least three times previously to the conviction of the crime charged in the indictment, been convicted of an indictable offence for which he was liable to at least five years' imprisonment, whether any such previous conviction was before or after the passing of this part and that he is leading persistently a criminal life . . .

Mr. ILSLEY: "And that he is leading persistently a criminal life."